IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3539 of 2005

Between:

Banoth Devulal, S/o. Sri B. Joga,
H.No. 2-9-418, Snehanagar, NGOs Colony Road,
Hanmakonda, Warangal District.

..... PETITIONER

AND

1 The Chairman & Managing Director, A.P. Transmission Corporation Ltd., Khairatabad, Hyderabad.
2 A.P. Northern Power Distribution Company Ltd., rep. by its Chairman & M.D., Warangal.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an order, Direction, writ more particularly in the nature of Writ of Certiorari and after calling for records in pursuance of Memo No. CGM(HRD) GM (S)/AS(I)/680-PO-1/04-1 dt. 7.2.2005 issued by the second respondent and quash the same and consequently direct the respondent to continue the petitioner as Divisional Engineer.

Counsel for the Petitioner: MR.S.RAVINDRANATH

Counsel for the Respondents: MR.KISHORE SAMINENI (SC FOR AP TRANSCO)

The Court, at the admission stage, made the following :

ORAL ORDER:

This writ petition is filed challenging the Memo No.CGM(HRD)/GM(S)/AS(I)/680-PO-I/04-1, dated 7.2.2005 issued by the 2nd respondent and to quash the same.

The brief facts that are necessary for the purpose of disposal of the writ petition may be depicted as follows:

The petitioner was appointed as Foreman Grade-I in April, 1974. In 1999, he was promoted as Asst. Divisional Engineer. By virtue of the proceedings, dated 29.10.2004, he was promoted to the post of Divisional Engineer and he is working as such till today. While the matter stood thus, on 30.11.2004, a memo was issued by the 2nd respondent to submit his representation on the proposed review for withdrawal/cancellation of promotion from the post of Divisional Engineer to that of Asst. Divisional Engineer. Challenging the same, he filed W.P.No.24117 of 2004 whereunder, this Court directed the petitioner to give an explanation within two weeks, for which, he gave a detailed representation, dated 15.1.2005. Without properly appreciating the contentions raised by him, the impugned order has

been passed. The contention of the petitioner is that as he lacks ten years of service as Asst. Divisional Engineer (Diploma Holder), he was sought to be reverted and this clause relating to the period of 10 years of service has been deleted vide B.P.M.S No.599, dated 30.3.1991 and the power to review the promotion can be exercised by the Board and not by the 2nd respondent. Hence, this writ petition has been filed.

The 2nd respondent filed a counter affidavit stating that the petitioner was issued a Memo wherein it is informed that his promotion is proposed to be reviewed as it was not as per service regulations, for which the petitioner filed W.P.No.24117 of 2004. Appointment to several classes of service are specified in column No.1 of Annexure-I and therefore, Regulation 6(a) Part-III of the Service Regulations shall have to be read in conjunction with the Regulation 14. The Service Regulations of the company will be strictly complied with before issuing the reversion order. The case of the petitioner cannot be considered invoking the power of relaxation under Regulation 41 part-II of the Service Regulations in the best interest of efficiency and administration. Therefore, he prays to dismiss the petition.

The learned counsel for the petitioner has raised four contentions. According to him, no other qualifications have been prescribed for the post of Divisional Engineer, but only for the promotions from the cadre of Asst. Divisional Engineer as per Regulation 6(a). His second contention is that as per Annexure-III, the minimum requirement of 10 years of service is deleted and the same cannot be made applicable in view of the Regulation 6(a). The third contention is that the Board has only power to review under Regulation 25(b) and the Chairman and Managing Director has no power to review the promotion of the petitioner. His fourth contention is that under Regulation 41, the Board has power to relax the conditions for promotion and the service conditions of some persons were relaxed and the same can be extended to the petitioner also.

On the other hand, the learned counsel for the respondents has

contended that all the regulations relevant for the purpose of promotion from the post of Asst. Divisional Engineer to that of Divisional Engineer have to be read together. If that is the case, one must possess 10 years of standing service as Asst. Divisional Engineer, then only, one is eligible for promotion. The said clause has not been deleted at any point of time. Since this Court directed the Chairman and Managing Director to pass orders, he passed the orders. Therefore, the petitioner cannot turn round and say that the Chairman and Managing Director has no jurisdiction. For better administration and in the interest of the Corporation, the conditions can be relaxed, but in case of the cadre of the writ petitioner, no conditions can be relaxed. Therefore, the writ petition is devoid of merits and is liable to be dismissed.

A Memo, dated 30.11.2004 was issued to the petitioner to submit his representation within 15 days from the date of the said Memo proposing to review to withdraw or cancel the promotion given to him with immediate effect. The petitioner was promoted to Divisional Engineer vide proceedings No.N.O.O.(CGM/HRD) RT.No.166, dated 29.10.2004. He filed W.P.No.24117 of 2004 challenging the Memo dated 30.11.2004. This Court directed the 2nd respondent therein who is the Chairman and Managing Director to take appropriate decision in accordance with law and the rules duly taking into consideration the case of the similarly situated person for whom exemption has been granted, after the petitioner submits his explanation. The petitioner gave an explanation on 15.1.2005, and thereafter, the impugned orders have been passed. As seen from the impugned orders, as per the regulations, a non-engineering graduate must have worked as Asst. Divisional Engineer for a period of not less than 10 years for being considered for promotion to Divisional Engineer and some promotions were effected in relaxation of the conditions of the years of service in the company i.e. in Engineering Service, Accounts Service and P&G Service, but not in the electrical branch

As per regulation 6(a) Part-III of Service Regulations, appointment to

several classes of service specified in column No.(1) of Annexure-I shall be made as specified in the corresponding entry in column No.2 therein. Regulation 14 of the said regulations also provides that no person shall be eligible for appointment to the post and by the method mentioned in Annexure-III unless he possesses the qualification specified therein. As per Annexure-III, one must have worked as Asst. Divisional Engineer for a period of not less than ten years to become eligible for promotion to Divisional Engineer. According to the learned counsel for the petitioner, that clause was deleted vide B.P.Ms.No.599, dated 30.3.1991, but the said fact is not seriously pressed after the counsel for the respondents argued the case. Even otherwise, in the show cause notice, dated 30.11.2004, it is clearly stated that as per B.P.Ms.No.599, dated 30.3.1991, the words “must have shown exceptional merit and” were only deleted. The said fact has not been seriously disputed.

The learned counsel for the respondents has contended that based on the deleted words “must have shown exceptional merit and” the petitioner was given promotion. Inasmuch as the said words have been deleted and the petitioner does not possess 10 years of services as Asst. Divisional Engineer which is not denied or disputed before this court, the petitioner is not entitled to promotion. Therefore, as per Annexure-III, one must have worked as Asst. Divisional Engineer for a period of not less than 10 years of service for seeking promotion. No doubt, though the Regulation 6(a) does not indicate any other qualification prescribed for the post of Divisional Engineer except by way of promotion from Asst. Divisional engineer, the said Regulation 6(a) cannot be read in isolation, but it has to be read along with Regulation 14 which prescribes the method to be followed as per Annexure-III. As per Annexure-III, one must have worked as Asst. Divisional Engineer for a period of 10 years. All the regulations have to be read in juxtaposition as they have got to be understood insofar as promotion to Divisional Engineer from the cadre of Asst. Divisional Engineer is concerned. If all the regulations are read together, one must have worked for a period of 10 years in the cadre

of Asst. Divisional Engineer. Admittedly, the petitioner has not worked for a period of 10 years in the cadre of Asst. Divisional Engineer. Therefore, he is not eligible for promotion. It is the case of the respondent that based on the qualification that the petitioner possesses exceptional merit, he was given promotion as Divisional Engineer as per the proceedings, dated 29.10.2004, but that exceptional merit has been deleted in B.P.Ms.No.599, dated 30.3.1991. Therefore, the petitioner does not possess any other qualification for getting promotion. Accordingly, the respondents intend to review to withdraw or cancel the promotion with immediate effect after calling for the petitioner's explanation. His explanation cannot be said to be contrary to the regulations.

It is contended by the learned counsel for the petitioner that the power to exercise review can only be done by the Board but not by the Chairman and Managing Director. Under regulation 25(b), the Board may, of its own motion or otherwise, review any original order passed by it, promoting a member of a service or class to a selection category or grade, etc. In my considered opinion, the petitioner cannot challenge the same in view of the fact that this Court, in W.P.24117 of 2004 filed by him, directed the Chairman and Managing Director to take appropriate decision in accordance with the rules and regulations. In pursuance of the said direction, the Chairman and Managing Director passed the order. If the Chairman and Managing Director has no power or authority to review the case, the writ petitioner ought to have brought to the notice of this Court in W.P.No.24117 of 2004 so that appropriate direction would have been given by this Court. Even otherwise, in my considered opinion, Regulation 25(b) of A.P.S.E.B. Service Regulations has no application because, the Board has power to review any original order passed by it. The order No.N.O.O.(CGM/HRD) Rt.No.166, dated 29.10.2004 is shown to have been passed by the Board. Therefore, the Board alone has power to review the same. Hence, the said contention cannot be accepted.

The last contention put forth by the learned counsel for the petitioner is that under Regulation 41, conditions can be relaxed by the authority, and in cases of Junior Personnel Officers, they were given relaxation in respect of number of years of service rendered by them.

As per the proceedings, dated 22.4.2003, three Junior Personnel Officers of P & G Services were promoted in relaxation of Regulation 14 of the A.P.S.E.B. Service Regulations Part-II as they have not put in the required 10 years of service in the category of Junior Personnel Officer. So also, in case of three other Junior Personnel Officers, some relaxation was given for promotion as Personnel Officers by virtue of the proceedings, dated 30.9.2002 of the respondents. As seen from the proceedings, there are three services in the respondent-corporation. They are Engineering Service, Accounts Service and Personnel and General Service. For effecting promotions in these three services, a committee is constituted and it is yet to submit its report. The petitioner has not shown that from the Engineering Service, some other person was given promotion as Divisional Engineer after relaxing the rule of minimum service of 10 years as Asst. Divisional Engineer. In other branches of the respondent-corporation, i.e. Accounts Service and Personnel & General Service, some relaxations have been given and that does not mean the case of the petitioner is discriminated. The length of service prescribed by the Service Regulations in the feeder posts for considering promotion to the higher posts is not unique in the Engineering Service, Account Service and Personnel and General Service. Therefore, some relaxation was given in case of Personnel & General Service. The same cannot be taken as advantage by the petitioner and contend that his case was discriminated. If any relaxation was given from Engineering branch, then certainly, it can be said that the case of the petitioner should be treated on par with the similarly situated persons, but the petitioner has not shown any proceedings or alleged that any person from Engineering Service was given promotion to Divisional Engineer after relaxing the

minimum length of service exercising Regulation 41.

For the foregoing reasons, the order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this Court. However, inasmuch as the Chairman and Managing Director has constituted a committee to examine the minimum service required as prescribed in the feeder posts for promotion to the next higher posts not only in the Engineering Service, but also in Account Service and Personnel and General Service and the committee has yet to submit its report, appropriate decision has to be taken by the respondents for giving promotion to the petitioner.

In the result, the writ petition is disposed of to the extent indicated above. In the circumstances of the case, there shall be no order as to costs.

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(K.C. BHANU, J.)

April, 2005

bcj

To

1 The Chairman & Managing Director, A.P. Transmission Corporation Ltd., Khairatabad, Hyderabad.

2 The Chairman and Managing Director, A.P. Northern Power Distribution Company Ltd., Warangal.

3 Two C.D. copies.